PATENT
ATTY. DOCKET NO.: P65973US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CATHAL McGLOIN, et al.   Group Art Unit: 3626

Serial No. 09/672,829   Examiner: M. Kapadia

Filed: September 29, 2000

For: PERFORMANCE MANAGEMENT SYSTEM

RECEIVED
JUL 1 4 2004
GROUP 3600

DECLARATION OF CATHAL McGLOIN

RECEIVED
JUN 3 0 2004
Technology Center 2600

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
JUN 3 0 2004
Technology Center 2100

Sir:

I, Cathal McGloin, do hereby declare the following:

1. I reside in Lexington, Massachusetts 02421, am currently employed by Performix

Technologies at 25 Corporate Drive, Burlington, Massachusetts 01803, and am one of the named

inventors in the above-identified application.

2. My educational background is set forth on my Curriculum Vitae ("CV") attached hereto as

Attachment A. As indicated, I have a Bachelors Degree in Engineering and Masters Degree in Business

Administration from University College Dublin, Ireland, and have been published extensively in the

field of Employee Performance Management in Call Centers.

3. My professional experience, which is also set forth on the attached CV, Attachment A,

includes over 10 years of experience as a management consultant and business manager in a variety of

1

industries with Siemens AG, Hoskyns and Cap Gemini, as well as a board member of the Michael

Smurfit Graduate Business School in Dublin, Ireland. As a result of my education and experience, my

professional contemporaries and colleagues consider me an expert in the field of Employee

Performance Management.

4. Based upon my education and experience, I have an opinion regarding what the level of

ordinary skill in the Employee Performance Management field generally would be. Persons of ordinary

skill in this art would include not only those individuals skilled in enterprise software applications and

call centers, but also those concerned with human resource management, employee motivation and

performance management theories as described by Michael Armstrong, etc. In most cases, such

persons would have at least a bachelors degree in business and/or human resource management, and

would have at least several years of experience in call centers and operations management.

5. Drawing upon my expertise in this industry, I understand the level of ordinary skill in the art

at the time the above-captioned application was filed (September 29, 2000) and can offer my expert

opinion as to how persons of ordinary skill in the art would perceive and respond to relevant art in the

field of Employee Performance Management.

6. I have reviewed the prior art considered by the Patent Examiner, specifically U.S. Patent No.

6,119,097 to Ibarra, U.S. Patent No. 5,909,669 to Havens, and Darling et al., "Databases with

Character", InfoWorld, February 21, 1994, vol. 16, issue 8, pages 67-79 (hereinafter "Darling"). I

understand that there are additional secondary references that the Examiner has considered but the

Ibarra and Havens patents, in combination with the article by Darling, are the principal references that I

understand have been relied upon by the Examiner.

7. It is my understanding that the primary basis for all rejections is the Examiner's contention

that it would be obvious for a person of ordinary skill in the art to combine the Ibarra and Havens

2

patents with the article by Darling and thus obtain the invention claimed in my patent application. In my opinion, it would not be obvious to a person of ordinary skill in the art to combine these references and, even if so combined, such a person would not obtain the present invention.

8. My invention relates to a performance management system for use in an organization having employees working to achieve organization performance goals. The system includes an integration engine for automatically capturing employee performance data from an external system; configuration functions for configuring employees, objectives, and objective groups; data dictionary functions for creating data dictionary items defining how performance measurement data imported into the system is processed and displayed; and information management functions for processing the performance measurement data according to an objective and an objective group to generate employee performance management data. As set forth in claims 1 and 15, the data dictionary function includes a menu that allows the user to create a database field, define formulas by which the database field is calculated, and establish rules to determine how a result obtained for the database field is entered, displayed and calculated. The menu further provides the user with data entry options to describe the database field, specify an organizational hierarchical level for the field, and set a data measurement period. Using the menu to define the formulas, the user is able to select at least two variable fields, relate them with a selected operator, and thereby calculate the database field, and can also establish rules including data entry options for specifying a display mask format and for enabling manual data entry and override capabilities.

9. Our product incorporating this invention is called Emvolve Performance Manager. The Emvolve system provides highly automated and comprehensive processing of the automatically captured measurement data in a manner quite apart from the previously known performance management-type of systems. In contrast to the comprehensive capability of the present invention, at

3

the filing date of our patent application, the state of the art included fragmented systems for specific tasks, and the prior art documents of Ibarra, Havens and Darling are representative of the type of products available at that time.

10. The Ibarra system is essentially a tool to enhance the traditional employee-supervisor manual review or appraisal procedure. It puts structure on this procedure, but would be hugely time-consuming to use by supervisors in a large call centre having thousands of agents, for example.

11. The system set forth in the Havens patent is one of the traditional approaches using survey data. Such data is subjective and, in any event, is difficult to gather in a large organization.

12. The article by Darling mentions a data dictionary concept but I am not aware of any trend or thinking in the industry, at the time of filing of the present invention, toward using a data dictionary as we have defined it to address the problem of performance management in large organizations.

13. Until our invention, it was believed that in large organizations performance data could only be merged either in a time-consuming employee-supervisor manner on a manual basis, or in an automated but crude manner with little useful information being gleaned at the employee or team level. The thinking was that one must trade off one for the other.

14. Our system represented a radically new approach. We considered the needs of both large numbers of employees and of organization management in an integrated, holistic manner. Our complete Emvolve system achieves "the best of both worlds" with non-subjective measurement data being automatically captured and processed in a highly automated manner while also giving very comprehensive employee-level performance management data. This coupling of previously irreconcilable aspects has been achieved by the interaction of the integration engine with the configuration, data dictionary, and information management functions as set forth in claims 1 and 15.

4

15. While the present invention may appear simple now, providing a configuration function for confining objective groups was hugely important to the call centre industry. It allows the importance that an organization attaches to an objective to be taken into account and this is achieved at an individual employee level. Furthermore, all this is achieved in a non-subjective manner based on actual measurement data.

16. The Emvolve product has been very successful in the marketplace, having been installed in 30 sites, with these sales being achieved during a very deep recession in the IT industry. As supported by results at Verizon Wireless, JP MorganChase, Cooperative Bank, Wells Fargo Home Equity, these sales are directly attributable to the interaction of the integration engine, configuration functions, data dictionary function, and information management functions as set forth in claims 1 and 15.

17. It is my opinion that the subject matter claimed in the above-identified application would not have been obvious to one of ordinary skill in the art based upon the prior art cited and considered by the Patent Examiner, or any other prior art performance management type of system known to me.

18.   I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under section 1001 of Title 18 of the United States Code; and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date __6/24/04__   Cathal McGloin _____

Attachment A: CV of Cathal McGloin
R:\Home\SBAILEY\6-04\P65973US.expdeo